

OFFICE OF HEARINGS AND APPEALS

April 3, 2009

Decisions Issued:

Personnel Security (10 CFR Part 710)

On March 31, 2009, an OHA Hearing Officer issued a decision in which he concluded that an individual's access authorization should not be restored. A DOE Operations Office suspended the individual's security clearance after receiving information that the individual illegally exchanged and misused prescription medication. This conduct violated a DOE Drug Certification executed by the individual when she was granted a security clearance. In addition, the individual initially provided false information to DOE security officials regarding her conduct. After conducting a hearing and evaluating the documentary and testimonial evidence, the Hearing Officer determined that the individual's illegal drug involvement was unlikely to recur, and her provision of incorrect information to DOE security officials was not a deliberate act of deception. The record established that the individual was under great physical and emotional pain when her illegal exchange and misuse of the prescription medication occurred. The Hearing Officer, however, found that the individual had not adequately mitigated the security concerns relating to her reliability and trustworthiness arising from her violation of the DOE Drug Certification. OHA Case No. TSO-0690 (Steven L. Fine, H.O.)

Appeals

On March 30, 2009, OHA issued a decision granting in part an Appeal filed by Power Wire Constructors (Power Wire) under the Freedom of Information Act (FOIA). The Appeal related to a FOIA request that Power Wire filed with the Western Area Power Administration (WAPA) seeking copies of WAPA's employees' and inspectors' daily reports, logs, notes, letters and e-mails, including the writings of several WAPA employees, for the period August 1, 2008, to the present. WAPA conducted a search and located over 2,000 pages of responsive documents. In its determination letter, WAPA substantially released these documents but withheld: (1) portions of responsive documents pursuant to the deliberative process and attorney-client privileges of FOIA Exemption 5, (2) personal e-mail addresses and telephone numbers of its employees, contained in other documents, pursuant to FOIA Exemption 6. In considering the Appeal, OHA determined that WAPA had failed to identify the specific portions of the responsive information it withheld under Exemption 5, and remanded the matter to WAPA to identify and explain the privilege basis for its Exemption 5 withholdings in a new determination letter. However, OHA found that the public interest in disclosing personal e-mail addresses and telephone numbers is outweighed by the real and identifiable privacy interest of the WAPA employees. Thus, OHA determined that WAPA properly withheld the information pursuant to Exemption 6. OHA Case No. TFA-0297

On March 31, 2009, OHA issued a decision granting in part an Appeal filed by Michael Ravnitzky from a FOIA determination issued by the National Nuclear Security Administration (NNSA). Mr. Ravnitzky had filed a FOIA request in which he sought copies of several Inspector General (IG) audit reports. The IG referred two reports to NNSA for determination, because NNSA had created them. In its determination, NNSA withheld

portions of the appendices to each of the reports from Mr. Ravnitzky on the basis of Exemption 3 of the FOIA. Mr. Ravnitzky limited his Appeal to the material withheld from those appendices. OHA referred this Appeal to the Office of Health, Safety and Security, which is responsible for reviewing the classification of information. That Office determined that some of the information previously withheld under Exemption 3 was properly classified as National Security Information, and therefore should be withheld from public disclosure under Exemption 1 of the FOIA, which protects from disclosure information that is properly classified under criteria established in an Executive Order. It also determined that some of the information initially withheld did not qualify for protection under either Exemption 1 or Exemption 3. Consequently, OHA remanded the matter to NNSA for a new determination as to whether the information previously withheld but not currently withholdable should be released to Mr. Ravnitzky or withheld pursuant to any other provision of the FOIA. OHA Case No. TFC-0001